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In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-554

TULARE LAKE CANAL COMPANY, and
TULARE LAKE BASIN WATER STORAGE DISTRICT,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

Brief on Behalf of North Kern Water Storage District, the City of Bakersfield, Buena Vista Water Storage District, Kern Delta Water District, Rosedale-Rio Bravo Water Storage District, Kaweah Delta Water Conservation District, Lower Tule River Irrigation District, Porterville Irrigation District, Vandalia Irrigation District, and Pioneer Water Company, Amici Curiae, in Support of the Petition for a Writ of Certiorari

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This brief is filed on behalf of the ten *amici curiae* named above with the written consents of all of the parties to the proceeding. The written consents are being filed with the Clerk concurrently with this brief.

OPINIONS BELOW

The opinion of the Court of Appeals, reported at 535 F.2d 1093, appears in a separate Appendix to the Petition for a Writ of Certiorari herein as Exhibit A. The opinion of the Court of

Appeals denying motions for rehearing and for rehearing *en banc*, reported at 535 F.2d 1143, appears in the Petitioners' Appendix as Exhibit B. The opinion of the United States District Court for the Eastern District of California, reported at 340 F.Supp. 1185 (1972), appears in the Petitioners' Appendix as Exhibit C.

The Findings of Fact, Conclusions of Law and Judgment of the District Court, which appear in the Record at C.T. 2588, *et seq.*, are attached to this Brief as an Appendix.

THE INTERESTS OF THE AMICI CURIAE

Each of the ten *amici curiae* has a substantial interest in storing its privately-owned irrigation water in a "dam-and-reservoir" flood control project constructed by the Corps of Engineers under Section 10 of the 1944 Flood Control Act. Each of these projects is similar, both in its physical characteristics and in its legal status, to the Kings River Project which is the subject of this litigation.

All but one of the *amici curiae* are public entities organized under the laws of California. Three of them are water storage districts, three are irrigation districts, one is a water district, one is a water conservation district, and one is a city. The tenth, Pioneer Water Company, is a mutual water company organized under the laws of California.

Each of these entities has certain rights to the diversion and distribution of waters of a natural stream across the channel of which the Corps of Engineers has constructed an upstream dam and reservoir, primarily for flood control purposes. Each entity distributes water to farmers within its service area for irrigation use. Some of the lands in each service area are held in ownerships exceeding 160 acres per owner. Each entity owns and operates its own system, built many years ago without governmental assistance, financial or otherwise, for diverting, transporting and distributing its water supply. Nine of the entities have rights, under contracts with the United States, to store their own irrigation water temporarily in the upstream reservoirs when space therein is not needed for flood protection. The other entity (Rosedale-Rio Bravo Water Storage District) may in the future acquire a right to do so.

The lands served with irrigation water by these ten entities include approximately 763,000 irrigable acres. These lands are all outside of and separate from the Kings River service area, which contains approximately 850,000 irrigated acres affected by the Kings River Project. The ten *amici curiae* do not include any of the 29 water distributing entities which distribute Kings River water (see page 21 of the Petition).

Each amicus curiae has an obvious and substantial interest in the outcome of this litigation. Each of them endorses and supports the Petition for a Writ of Certiorari herein.

Each of the projects in which the *amici curiae* are interested will now be briefly described.

Kern River Project

The "Isabella Project" on Kern River consists of a dam and reservoir completed in 1954 by the Corps of Engineers under the authority of Section 10 of the Flood Control Act of 1944 (58 Stat. 887 at 901). Section 10 is the same section that authorized the Kings River Project. The authorizing language for the Kern River Project is similar to but not identical with the language used in authorizing the Kings River Project.

The legislative history of the Kern River Project is similar to that of the Kings River Project, and the negotiations between the local interests and the United States for the purchase of the right to store privately-owned irrigation water in the two reservoirs proceeded along approximately parallel courses.

On October 23, 1964, North Kern Water Storage District and the Buena Vista Water Storage District, together with two other public districts,* entered into a contract with the United

*One of them being Tulare Lake Basin Water Storage District, one of the Petitioners herein.

States for the purchase of the permanent right to store privately-owned irrigation water in the Isabella Reservoir, whenever space in the reservoir might be available for that purpose, in return for the payment in cash of $4,573,000 to the United States. That sum of money represented the portion of the capital cost of the Kern River Project allocated by the United States to the value of the right to use the reservoir for the storage of privately-owned irrigation water. The entire sum of $4,573,000 was paid to the United States in cash on the date when the contract became effective, March 31, 1965. The contract contains provisions substantially identical to those contained in the contract between the United States and Tulare Lake Canal Company as described in the decision of the Court of Appeals herein (Petitioners' Appendix, Ex. A, pages 3-4; 535 F.2d 1095).

The decision of the Court of Appeals contains frequent references to the Kern River Project, and in Footnote 19 (Pet. App., Ex. A, p. 16; 535 F.2d 1102) states: "There is no basis for distinguishing the two projects." (This statement is not entirely correct, as there is a difference in the authorizing language used by the Congress in Section 10 with respect to the two projects, but the difference is not material for present purposes.) It is therefore obvious that the North Kern and Buena Vista districts have a very substantial interest in the outcome of this litigation.

The City of Bakersfield is now in the process of completing its purchase of substantial privately-owned water rights on Kern River, together with the right to the use of a portion of the storage space in Isabella Reservoir. The City's interest in this litigation therefore parallels that of the North Kern and Buena Vista Water Storage Districts.

Parenthetically it may be noted that the Kern River flows through the City of Bakersfield, a metropolitan area which has a population of almost 200,000 people. Prior to completion of the Isabella Flood Control Project on Kern River the City of Bakers-

field was subject to severe and not infrequent flood damage. The inhabitants of the City are major beneficiaries of the flood protection afforded by the Isabella Project; in fact, since it was completed in 1954, the Isabella Project has spared the inhabitants and property owners of the Bakersfield area untold millions of dollars in flood damage which would have occurred if the reservoir had not been in existence. The Project has paid for itself many times over in flood protection alone.

Kern Delta Water District is also in the process of acquiring substantial privately-owned water rights on the Kern River and the right to use a portion of the irrigation water storage space in Isabella Reservoir. Its interest in this litigation also parallels that of the North Kern and Buena Vista Districts.

Rosedale-Rio Bravo Water Storage District has a contractual right to certain of the waters of the Kern River and from time to time it may in the future make arrangements with one of the other parties for the use of storage space in Isabella Reservoir. Thus its interest in this litigation is similar to that of the other Kern River parties.

The area embraced within the boundaries of the four Districts having Kern River water rights is approximately 337,000 acres. Included within this area are approximately 323,000 acres of irrigable land, substantial parts of it in ownerships exceeding 160 acres per person.

Kaweah River Project

Section 10 of the 1944 Act also authorized construction by the War Department of the "Terminus Reservoir" Project on the Kaweah River, primarily for flood control purposes (58 Stat. 901). This project has been constructed and is operated by the Corps of Engineers. The Kaweah Delta Water Conservation District, one of the *amici curiae* herein, has entered into a contract with the United States for the use of storage space in Terminus

Reservoir for the storage of privately-owned irrigation water whenever space in the reservoir is available and is not needed for flood protection. That contract contains "standard" acreage limitation provisions, requiring "recordable contracts" whereby excess landowners agree to sell their excess lands as a condition to delivery of stored water to such lands. However, the contract also provides in Article 14 thereof that:

> "* * * in the event it ever shall be determined by the final judgment of a court of competent jurisdiction in an action to which the United States or any officer or representative thereof is a party that the laws of the United States do not at the date of this contract * * * * prohibit the delivery of stored water under this contract to the excess lands of a large landowner who has not executed a recordable contract * * *",

then the acreage limitation provisions of the contract will no longer be of any force or effect, and all "recordable contracts" shall be cancelled. Thus the District and its landowners have a direct and substantial interest in the final outcome of this litigation.

The gross area of Kaweah Delta Water Conservation District is approximately 337,000 acres including approximately 327,000 irrigable acres, substantial portions of which are held in ownerships exceeding 160 acres per person.

Tule River Project

In Section 10 of the 1944 Flood Control Act, Congress also authorized construction by the Department of War of the "Success Reservoir" on the Tule River for flood control and other purposes (58 Stat. 901). The reservoir has been completed, and some years ago Lower Tule River Irrigation District, Porterville Irrigation District, Vandalia Irrigation District, and Pioneer Water Company, each of which is one of the *amici curiae* herein, entered into a contract with the United States for the permanent right to use

storage space in Success Reservoir, when not needed for flood protection, for the storage of privately-owned irrigation water. The contract contains standard acreage limitation provisions. It also contains a clause, like that in the Kaweah contract described above, cancelling such provisions in event of a favorable court decision.

These four entities on Tule River contain in the aggregate approximately 124,000 acres of land of which approximately 113,000 acres are irrigable. Substantial portions of this land are owned in areas of more than 160 acres per person. The interest of these entities and their constituent landowners in the final outcome of this litigation is obvious and substantial.

SUMMARY OF ARGUMENT

The Court of Appeals has decided two extremely important questions of Federal Reclamation Law which have not been, but should be, settled by the Supreme Court. They are questions affecting a great many agricultural areas in the United States, in addition to the very large Kings River area which is the subject-matter of the decision. The presence and interest of these ten *amici curiae* illustrate the importance of the decision in areas outside the Kings River area. The agricultural areas served with irrigation water by these ten *amici curiae* include approximately 763,000 irrigable acres, equal to about 1,200 square miles.

The Court of Appeals decided that the general provisions of Section 8 of the 1944 Flood Control Act, which the Court held to be applicable to all dam-and-reservoir flood control projects generally, prevail over the specific provisions of Section 10 of the same statute which relate to the Kings River Project only. This decision of the Court of Appeals is directly contrary to a long line of Supreme Court decisions establishing the rule that specific provisions of a statute prevail over general provisions of the same statute which might be applicable in the absence of the specific provisions. Thus the decision is in conflict with Supreme Court decisions.

In three respects the decision of the Court of Appeals "has so far departed from the accepted and usual course of judicial proceedings" as to call for this Court's exercise of its power of supervision:

> (1) In exercising its appellate jurisdiction, the Court of Appeals swept aside many of the Findings of Fact of the District Court without ever mentioning them or considering whether they were supported by the evidence in the Record. In its 52 printed pages and 201 footnotes, the decision of the Court of Appeals contains not a single reference to the Findings of Fact, not a single reference to the Record, not a single citation of the over 700 documentary exhibits introduced in evidence, and not a single citation to the testimony of a single witness.
>
> (2) In deciding that the so-called "pay-out" principle is invalid, the Court ignored—did not even mention, let alone consider or discuss—extensive and uncontradicted evidence, as well as Findings of Fact of the District Court, establishing that the Congress approved the "pay-out" principle and its application to this very project—the Kings River Project.
>
> (3) In its decision the Court of Appeals completely ignored—did not even mention, let alone discuss or consider —the Findings of Fact of the District Court establishing that the Defendant had, over a long period of years, expended large sums of money in reliance upon repeated assurances by officials of the Department of the Interior to the effect that the "pay-out" principle would be included in the contract for the use of space in the Kings River Reservoir for the conservation storage of privately-owned irrigation water, and that such assurances could not lawfully be repudiated because to do so would cause very substantial damage to the Defendant which had relied upon them. The Findings of Fact establishing this defense remain unchallenged. They are

> still in full force and effect, and they entitle Defendant to an affirmance of the District Court's judgment as a matter of law; yet the Court of Appeals totally ignored this alternative defense.

In each of these three respects the Court of Appeals failed to carry out the "accepted and usual" duties and functions of an appellate court.

The foregoing reasons for granting a writ of certiorari meet three of the criteria for granting a writ as delineated in paragraph 1(b) of Supreme Court Rule 19.

ARGUMENT

REASONS FOR GRANTING A WRIT OF CERTIORARI

Rule 19.1 of the Supreme Court Rules, indicating "the character of reasons which will be considered" in acting upon a petition for a writ of certiorari, includes the following:

> "(b) Where a court of appeals * * * has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, * * * as to call for an exercise of this court's power of supervision."

Each of these reasons is applicable here.

1. The Court of Appeals "Has Decided an Important Question of Federal Law Which Has Not Been, But Should Be, Settled by This Court"

In reversing the judgment of the District Court herein, the Court of Appeals for the Ninth Circuit decided two extremely important and far-reaching questions of Federal Law, not yet ruled upon by any other court:

First, the Court of Appeals held that dam-and-reservoir projects built by the Corps of Engineers primarily for flood control purposes under the 1944 Flood Control Act (58 Stat. 887) are subject to the Reclamation Laws of the United States (Act of June 17, 1902, 32 Stat. 388, as amended), including particularly the 160-acre limitation upon land ownerships contained in Section 46 of the Act of May 25, 1926, 44 Stat. 636 at 649.

Second, the Court of Appeals held invalid the so-called "pay-out" principle under which the acreage limitation provisions of Reclamation Law do not apply to land ownerships within the boundaries of an irrigation district or other entity in a reclamation project if, instead of taking advantage of the very substantial financial subsidy represented by the 40-year interest-free instalment payment plan available under Reclamation Law, the district or other entity pays in a lump sum to the United States the full amount which the United States determines to be that district's or entity's allocated share of the entire cost of the construction of the reclamation project.

The first of these questions affects all dam-and-reservoir flood control projects constructed by the Corps of Engineers under the 1944 Flood Control Act or under other prior or subsequent Congressional authorizations, except those constructed in whole or in part prior to the enactment of the 1944 Act. Furthermore, it affects all such projects located anywhere in the United States, not just those in the Western States where Reclamation Law applies. The second of the questions affects all Reclamation Projects, wherever located.

The importance of these questions to the agricultural economy of the country is stressed in the Petition, and need not be reemphasized here.

However, the presence of these ten *amici curiae* supporting the Petition illustrates in very specific manner the great importance outside of the Kings River area of the questions of Federal law

which are here involved. The lands served by these ten entities contain over 763,000 irrigable acres—approximately 1,200 square miles,—extending from the southern boundary of the Kings River Delta on the north to the foothills of the Tehachapi mountains on the south. These lands include practically all of the eastern side of the southerly portion of the Central Valley of California, and they constitute one of the largest and most productive areas of irrigated agricultural land in the United States.

The land ownership pattern of these lands has evolved under the normal influences of a free economy over a period of more than a century. The ultimate decision of this litigation will determine whether these lands will be allowed to continue to produce food and fiber with maximum efficiency and minimum cost, or whether, to the contrary, they will be subjected to artificial, non-economic forces tending to fracture large and efficient producing ownerships into small, inefficient and, in many cases, altogether impractical operating units, with inevitable increases in costs of production and consequent increases in prices to be paid by consumers.

2. The Court of Appeals "Has Decided a Federal Question In a Way In Conflict With Applicable Decisions of This Court"

The Court of Appeals decided that the general provisions of Section 8 of the Flood Control Act of 1944 prevail over the specific provisions of Section 10 which are applicable to the Kings River Project only. This decision is of direct interest to these *amici curiae* because the flood control projects which affect them were also authorized by specific, separate provisions of Section 10.

This decision of the Court of Appeals is in direct conflict with a long line of decisions of the Supreme Court holding that specific provisions of a statute prevail over general provisions in the same or another statute.

Almost a century ago, in the case of *Townsend v. Little* (1883), 109 U.S. 504, the Supreme Court stated what it called "the well-settled rule" as follows:

> "* * * * general and specific provisions, in apparent contradiction, whether in the same or different statutes, and without regard to priority of enactment, may subsist together, the specific qualifying and supplying exceptions to the general * * * *" (p. 512).

Later decisions of the Supreme Court applying the same rule include:

Rodgers v. United States (1902), 185 U.S. 83 at 92.

Kepner v. United States (1904), 195 U.S. 100 at 125:

"It is a well-settled principle of construction that specific terms covering the given subject matter will prevail over general language of the same or another statute which might otherwise prove controlling."

Ginsberg & Sons, Inc. v. Popkin (1932), 285 U.S. 204 at 208:

"General language of a statutory provision, although broad enough to include it, will not be held to apply to a matter specifically dealt with in another part of the same enactment. * * * Specific terms prevail over the general in the same or another statute which otherwise might be controlling."

MacEvoy Co. v. United States (1944), 322 U.S. 102 at 107:

"However inclusive may be the general language of a statute, it 'will not be held to apply to a matter specifically dealt with in another part of the same enactment. * * *' "

Fourco Glass Co. v. Transmirra Products Corporation (1957), 353 U.S. 222 at 228-229.

Bulova Watch Co. v. United States (1961), 365 U.S. 753 at 758.

Morton v. Mancari (1974), 417 U.S. 535 at 550-551.

In holding that the use of the Kings River Project for the storage of privately-owned irrigation water is to be administered by the Secretary of the Interior under the Reclamation Laws, the Court of Appeals relied solely upon the general provisions of Section 8 of the 1944 Flood Control Act (58 Stat. 887), and particularly upon the third sentence of Section 8 which the Court itself described as "general in coverage" (Pet. App., Ex. A, page 39; 535 F.2d 1116). The Court paid scant attention to the specific provision of Section 10 of the Act, which relates exclusively to the Kings River Project, and which specifically directs the Secretary of War (*not* the Secretary of the Interior) to make arrangements for payments to the United States for use of the Kings River project for the storage of privately-owned irrigation water.

The Court of Appeals devoted nearly one-half of its lengthy decision to a discussion of Section 8 and its legislative history (Pet. App., Ex. A, pages 9-43; 535 F.2d 1099-1118), quoting and relying upon communications to Congressional Committees from many sources, including President Roosevelt (e.g., Footnotes Nos. 13, 16 and 52) and Secretary Ickes (e.g., Footnotes Nos. 33, 46, 52 and 57), and upon testimony in Committee hearings by Secretary Ickes (e.g., Footnote No. 44) and by Reclamation Commissioner Bashore (e.g., Footnotes Nos. 18, 19, 20, 21, 22, 23 and 44). There are also some thirty citations to the *Congressional Record* in this portion of the opinion.

In contrast, the Court of Appeals relegated Section 10 to one short paragraph of text (Pet. App., Ex. A, page 38; 535 F.2d 1115) and three footnotes (Nos. 27, 83 and 177). It appears that the Court of Appeals was so fascinated with studying what various people *wanted* Congress to do, that it failed adequately to study what Congress actually *did* do in specifically authorizing the Kings River Project.

It is most appropriate, therefore, to examine the statute itself to see exactly what the Congress did.

Section 8 of the 1944 Flood Control Act reads in full as follows:

"SEC. 8. Hereafter, whenever the Secretary of War determines, upon recommendation by the Secretary of the Interior that any dam and reservoir project operated under the direction of the Secretary of War may be utilized for irrigation purposes, the Secretary of the Interior is authorized to construct, operate, and maintain, under the provisions of the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto), such additional works in connection therewith as he may deem necessary for irrigation purposes. Such irrigation works may be undertaken only after a report and findings thereon have been made by the Secretary of the Interior as provided in said Federal reclamation laws and after subsequent specific authorization of the Congress by an authorization Act; and, within the limits of the water users' repayment ability such report may be predicated on the allocation to irrigation of an appropriate portion of the cost of structures and facilities used for irrigation and other purposes. Dams and reservoirs operated under the direction of the Secretary of War may be utilized hereafter for irrigation purposes only in conformity with the provisions of this section, but the foregoing requirement shall not prejudice lawful uses now exisiting [sic]: *Provided,* That this section shall not apply to any dam or reservoir heretofore constructed in whole or in part by the Army engineers, which provides conservation storage of water for irrigation purposes." (58 Stat. 891)

For ready reference, the pertinent portion of the third sentence is underscored.

It is obvious beyond question that all parts of Section 8 constitute general provisions. The Court of Appeals has decided, on the basis of what it called the "general" provisions of the third sentence, that Section 8 applies to *all* dam-and-reservoir flood control projects including those "for which no additional irrigation facilities are required" (Pet. App., Ex. A, page 39; 535 F.2d 1116). As so construed, Section 8 applies equally to all "dam-and-reservoir" flood control projects operated by the Secretary of War except those already constructed in whole or in part. Thus Section 8 applies to projects authorized before 1944 but not yet constructed, to those authorized by the 1944 Act, and to those authorized in subsequent statutes. Furthermore, as noted above, Section 8 applies to projects in all parts of the United States, not just those in the Western or "Reclamation" States.

Section 8 is indeed about as "general" a provision as one could imagine.

Despite the generality of the first two sentences of Section 8, which refer to "any dam and reservoir project," those sentences are plainly limited to the situations as therein stated in which the Secretary of War, upon recommendation of the Secretary of the Interior, has made the determination referred to, a report and findings thereon have been made by the Secretary of the Interior, and specific authorization has thereafter been given by the Congress for the construction of "additional works." None of the conditions set forth in these two sentences, which would bring the Federal Reclamation Laws into play, has occurred in this case (Finding No. 12; App. pp. 7-8). The Court of Appeals was therefore induced to rely on the even more general language, underscored above, of the third sentence, and to maintain that the wording there used made the Federal Reclamation Laws applicable even in the absence of the determination, additional works, etc. referred to in the first two sentences. (Pet. App., Ex. A, pages 32, 38-39; 535 F.2d 1111-1112, 1115-1116.)* But on the Court's own interpretation of the third sentence of Section 8, this immediately required comparison of the exceedingly general language of Section 8, and particularly its third sentence, with the very specific language of Section 10, which dealt expressly and exclusively with the Kings River Project.

We now turn to Section 10.

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*We fully agree with the position of the Petition for a Writ of Certiorari, pp. 5-6, 34-37, that the third sentence of Section 8 simply does not permit the interpretation given it by the court below. Our present point, however, involves the well-established proposition that, in any event, as applied to the Kings River Project the general language of Section 8 must be matched against, and yield to, the specific provisions of Section 10.

The preamble of Section 10 and the paragraph of that section applying specifically to the Kings River Project read in full as follows:

> "SEC. 10. That the following works of improvement for the benefit of navigation and the control of destructive flood waters and other purposes are hereby adopted and authorized in the interest of the national security and with a view toward providing an adequate reservoir of useful and worthy public works for the post-war construction program, to be prosecuted under the direction of the Secretary of War and supervision of the Chief of Engineers in accordance with the plans in the respective reports hereinafter designated and subject to the conditions set forth therein: *Provided,* That the necessary plans, specifications, and preliminary work may be prosecuted on any project authorized in this Act to be constructed by the War Department during the war, with funds from appropriations heretofore or hereafter made for flood control, so as to be ready for rapid inauguration of a post-war program of construction: *Provided further,* That when the existing critical situation with respect to materials, equipment, and manpower no longer exists, and in any event not later than immediately following the cessation of hostilities in the present war, the projects herein shall be initiated as expeditiously and prosecuted as vigorously as may be consistent with budgetary requirements: *And provided further,* That penstocks and other similar facilities adapted to possible future use in the development of hydroelectric power shall be installed in any dam authorized in this Act for construction by the War Department when approved by the Secretary of War on the recommendation of the Chief of Engineers and the Federal Power Commission." (58 Stat. 891-2)

* * *

> "The project for flood control and other purposes for the Kings River and Tulare Lake Basin, California, is hereby authorized substantially in accordance with the plans contained in House Document Numbered 630, Seventy-Sixth Congress, third session, with such modifications thereof as in the discretion of the Secretary of War and the Chief of Engineers may be advisable at an estimated cost of $19,700,000: *Provided,* That the conditions of local cooperation specified in said document shall not apply: *Provided further,* That the Secretary of War shall make arrangements for payment to the United States by the State or other responsible agency, either in lump sum or annual installments, for conservation storage when used: *Provided further,* That the division of costs between flood control, and irrigation and other water uses shall be determined by the Secretary of War on the basis of continuing studies by the Bureau of Reclamation, the War Department, and the local organizations." (58 Stat. 901)

For ready reference, the specific direction to the Secretary of War regarding arrangements for use of the reservoir for conservation storage is underscored. Other paragraphs of Section 10 authorized some 90 additional flood control projects throughout the country, including those on the Kern, Kaweah and Tule rivers described above (58 Stat. 892-903).

This paragraph of Section 10 relates to one dam-and-reservoir project only—the Kings River Project. It contains very precise and specific provisions applying to that project and none other. It is about as "specific" a provision as one could imagine.

The contrast between the general provisions of Section 8 and the specific provisions of Section 10 is readily apparent. It is reflected most obviously in the scope of application of the two sections—Section 8 as construed by the Court of Appeals is a general provision which applies to all dam-and-reservoir projects across the country operated by the Secretary of War; Section 10, on the other hand, relates to the Kings River Project only. The contrast is reflected in the terminology used—Section 8 speaks of utilization of projects "for irrigation purposes" generally, while Section 10 specifically singles out "conservation storage" uses to be made of the Kings River Project. And it is reflected in the conflicting mandates given to two different government agencies.

The Court of Appeals has specifically held (Pet. App., Ex. A, page 43; 535 F.2d 1118) that Section 8 makes all of the provisions of Reclamation Law, administered exclusively by the Secretary of the Interior, applicable to the Kings River Project, including the 160-acre ownership limitation provisions of Section 46 of the 1926 Act (44 Stat. 636 at 649). The provisions of Reclamation Law are all *general* provisions, applying to all reclamation projects throughout the Western States. Under those laws the Secretary of the Interior does everything, including the allocation of construction costs among the irrigation and other benefits, the negotiation of repayment contracts, and the administration of the acreage limitation provisions.

Section 10, on the other hand, specifically provides that the allocation of costs as between flood control, irrigation and other uses of the Kings River Project shall be determined by the Secretary of War "on the basis of continuing studies by the Bureau of Reclamation, the War Department and the local organizations". Thus the Secretary of the Interior, through the Bureau of Reclamation, has a function to perform under the specific Kings River Project provisions of Section 10, but that function is limited to participating in, but not determining, the cost allocation process. Section 10 goes on to provide that when the portion of the cost to be allocated to use of the Kings River Project reservoir for conservation storage of privately-owned irrigation water is determined, the Secretary of *War* shall make arrangements for obtaining payment for such use of the reservoir "either in lump sum or in annual instalments". Needless to say, the Secretary of War has no authority to impose or enforce acreage limitations.

Obviously, these two sections of the statute present a square conflict as to who shall do what. Under the general provisions of Section 8 the only function given to the Secretary of War is to make a finding of feasibility. The Secretary of the Interior (with Congressional approval) does everything else. Under the

specific provisions of Section 10 the only function given to the Department of the Interior with respect to the Kings River Project, is to participate in the cost allocation process, and the Secretary of War actually determines the cost allocation and does everything else.

Both provisions cannot possibly apply. They are in direct conflict with each other. But the general provisions of Section 8 and the specific provision of Section 10 "may subsist together", as the Supreme Court said in *Townsend v. Little, supra,* "the specific [Section 10] qualifying and supplying exceptions to the general [Section 8]."

The rule established by the long line of Supreme Court decisions cited above, is that when general and specific provisions of a statute conflict, the specific provision prevails. Under that rule, the provisions of Section 10 relating specifically and solely to the Kings River Project necessarily prevail over the provisions of Section 8 relating to flood control projects generally.*

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*There was a clear and sound reason for treating the Kings River Project specially and excepting it from the general provisions of Section 8. That section provides for the construction of "additional works" (e.g., transportation canals and distribution ditches) in order to make dam-and-reservoir flood control projects useful for irrigation purposes. As stated in the Findings of Fact of the District Court a complete system of canals and ditches was already in existence and owned and operated by the water users in the Kings River service area, and "no canals, ditches or other distribution works have ever been built [in the area] by the United States or with any federal assistance" (Finding No. 10; App. page 6). All waters of the Kings River available for irrigation use were already "fully appropriated" (i.e., owned) by the water users (Finding No. 8; App. page 4), and "no new or supplemental water supply has been or is to be developed by Pine Flat Dam [i.e., the Kings River Project] which can be sold by the United States" (Finding No. 12; App. pp. 7-8). The Congress was fully informed of these facts, as well as the fact that a substantial part of the Kings River service area was physically unsuited to small-scale farming, and Congress knew that no "additional works" would be needed to make the Kings River Project useful for the storage and distribution of the privately-owned irrigation water (Findings Nos. 7-10; App. pp. 4-6). It was appropriate, therefore, for the Congress to except the Project from the general provisions of Section 8. This was done in Section 10. The same physical conditions and circumstances existed in 1944 with respect to the Kern, Kaweah and Tule Projects.

When the Court of Appeals held that the general provisions of Section 8 override the specific provision of Section 10 relating to the Kings River Project, the Court "decided a Federal question in a way in conflict with" the above-cited decisions of the United States Supreme Court which established the "well-settled rule" that "specific terms prevail over the general".

It is respectfully submitted that a Writ of Certiorari should be issued so as to enable this Court to correct this error of the Court of Appeals.

3. The Court of Appeals "Has So Far Departed From the Accepted and Usual Course of Judicial Proceedings * * * * As to Call for an Exercise of This Court's Power of Supervision."

A. THE COURT HAS IGNORED THE FINDINGS OF FACT OF THE DISTRICT COURT

The Findings of Fact of the District Court, copied in the attached Appendix, were made after a lengthy trial, during which over 700 documentary exhibits were introduced in evidence and 918 pages of Reporter's Transcript were produced including the testimony of 12 witnesses.

In the entire 52 pages of the reported decision of the Court of Appeals (535 F.2d 1093-1144), including its 201 footnotes, there is not a single reference to the Findings of Fact! Even more remarkable, there is not a single citation to the record in the District Court—not a single citation to even one of the over 700 exhibits—not a single citation to a page of testimony of any witness.* In numerous instances the Court of Appeals has overridden the Findings of the District Court without mentioning the Findings and without considering the evidence on which the Findings were based.

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*Some of the documents referred to in the opinion were introduced in evidence (e.g., the "1956 Study" hereinafter mentioned), but the opinion does not cite them as exhibits in the Record nor give their exhibit numbers. There is one reference in the opinion to testimony at the trial (Footnote No. 80), but the witness is not identified and the transcript references are not given.

The decision was rendered some two and one-half years after the submission of the case following oral argument in the Court of Appeals. The length of the decision, its scholarly style, and its 201 footnotes, give evidence of an enormous amount of independent research extending far beyond the record and briefs of the parties. The decision rests in large part upon evidence not in the record and never subjected to analysis or debate by counsel for the respective parties. In short, the decision is an elaborate, argumentative dissertation, based largely upon original research, without reference to the record in the case before it. This is not the "accepted and usual" function of an appellate court.

One cannot help noticing that, whereas the Court of Appeals paid no attention whatever to the Findings of Fact of the District Court, the Court referred more than a dozen times to the voluminous writings of Professor Paul S. Taylor (Footnotes 5, 99, 103, 106, 109, 139, 185, 193, 198 and 201). Professor Taylor is not a lawyer nor a law teacher; he is an economist (1976-7 *Who's Who in America,* page 3104). For several decades, however, Professor Taylor has been an ardent and articulate crusader for *extending* the acreage limitation provisions of Reclamation Law (See for example, the references in Footnotes 106 and 109 to Professor Taylor's contention that the 160-acre limitation should be perpetual). The opinion of the Court of Appeals is a tribute to Professor Taylor's advocacy.

B. THE COURT OF APPEALS COMPLETELY IGNORED THE EXTENSIVE EVIDENCE IN THE RECORD OF CONGRESSIONAL APPROVAL OF THE "PAY-OUT" PRINCIPLE

On November 9, 1953, the Secretary of the Interior confirmed the authority of the Bureau of Reclamation to negotiate with the Kings River water interests on the basis that:

> "* * * the repayment contract will provide for repayment of the irrigation allocation in 40 years without interest, with the option on the part of the water users organizations to make a lump sum payment in advance and that the excess land laws become inoperative upon payment in full * * *."

(See the letter from the Secretary of the Interior dated March 2, 1954, to Mr. C. J. Haggerty, Secretary-Treasurer of the California State Federation of Labor, a copy of which appears as Exhibit 62 in PART ONE of what the Court of Appeals calls the "1956 Study", hereinafter described).*

The announcement by the Department of the Interior that the Kings River contract would embody the "pay-out" principle stirred up a veritable hornets' nest of public controversy. For example, Professor Paul S. Taylor published a long article in the February, 1955 issue of the *Yale Law Journal* bitterly criticizing the Secretary of the Interior for this action (64 *Yale L.J.*, pages 477-514, cited in Footnotes 106, 109, 139 and 185 of the decision of the Court of Appeals). This controversy regarding the "pay-out" principle came to the attention of several Senators and members of Congress as shown by copies of correspondence which are exhibits to PART ONE of the "1956 Study": Senator Paul H. Douglas (Exhibit 49), Senator James E. Murray (Exhibit 80), Senator Wayne Morse (Exhibit 92), and Congressman John F. Baldwin of California (Exhibit 98).

As a result of this public controversy, Congressman William L. Dawson, Chairman of the Committee on Government Operations of the House of Representatives, on December 7, 1955, addressed a letter to Secretary McKay requesting an explanation of the Secretary's decision and suggesting that further action on the Kings River negotiations be held in abeyance pending study of the matter by the Government Operations Committee. A copy of Congressman Dawson's letter appears on the sixth fly-leaf of PART ONE of the "1956 Study". The letter reads in full as follows:

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*The "1956 Study" was introduced in evidence herein, by the United States, as Exhibits 84 and 85 (R.T. 772 and 776), but the Court of Appeals never mentions that fact.

> "It has been brought to the attention of the Committee on Government Operations that the Department of the Interior is now engaged in negotiating or concluding a contract arrangement in relation to the project variously referred to as 'Pine Flat Dam', 'Kings River and Tulare Lake Project'.
>
> The desirability and propriety of this contract, from the standpoint of efficiency and economy, obviously fall within the jurisdiction of the Committee on Government Operations. I, therefore, request that you furnish me, for the use of the Committee, a comprehensive statement of the history and status of this project, and of any pending agreements relating thereto. Moreover, I suggest that in view of the interest of this Committee, further action in the matter be held in abeyance until such time as the Committee has had a chance further to inform itself in the premises."

On December 22, 1955, the Acting Secretary of the Interior, Clarence A. Davis, responded to Congressman Dawson's letter, stating that the Department was reviewing the laws and departmental precedents involved in this matter, promising to supply copies of the review to Congressman Dawson, and stating that action on the negotiated contract would be deferred until completion of the analysis. (A copy of this letter appears on the fifth fly-leaf of PART ONE of the "1956 Study".)

On January 5, 1956, Congressman Earl Chudoff, Chairman of the Public Works and Resources Sub-Committee of the Committee of Government Operations of the House of Representatives, wrote to Secretary McKay specifically requesting that the Department's analysis include the terms and conditions of the proposed contract with the Kings River interests. Congressman Chudoff's letter included the following:

> "I also wish to renew Chairman Dawson's suggestion that in view of the interest of this committee, further action on any proposed arrangement or contract be held in abeyance until the committee has had a chance to study the matter and the terms and conditions of the proposed contract."

(A copy of this letter appears as the fourth fly-leaf of the "1956 Study".)

This letter was answered by Mr. Davis on January 16, 1956, in a letter which concluded with the following paragraph:

> "Action on the negotiated contract that will be submitted to the Department for approval will be deferred until this analysis is finished and until there has been reasonable time to give it necessary study."

(The third fly-leaf of the "1956 Study".)

On May 25, 1956, Under-Secretary Davis wrote to Congressman Chudoff (see the second fly-leaf) transmitting 30 copies of a two-volume report entitled "Excess Land Provisions of the Federal Reclamation Laws and the Payment of Charges". These are the volumes the Court of Appeals calls the "1956 Study" (Footnotes 142 and 173). Each volume is over an inch thick.

The first volume (PART ONE) contains a 56-page Summary of the Acts of Congress and actions of the Department of the Interior followed by a chronologically-arranged collection of copies of Department rulings, correspondence, memoranda, etc. The entire volume relates exclusively to the "pay-out" principle.

The first paragraph of the Summary reads as follows:

> "This summary is designed to present the principal provisions of the acts of Congress referred to as the 'Reclamation Laws' in so far as they deal with or bear upon the effect which final payment of capital charges has upon the excess land limitations of those laws with respect to the lands as to which such charges are paid, and to outline the decisions, actions, and statements coming officially from the Department of the Interior relating thereto. The summary is limited to this phase of the excess land provisions, and does not attempt to cover the application of such provisions in any manner not directly related to the question under inquiry. Some of the general legislation and some special enactments dealing otherwise with the general subject matter are therefore not cited."

The concluding paragraph of the Summary appearing on page 56, reads as follows:

> "The proposal contained in the repayment contract arrangements negotiated with the Kings River Conservation District is simply that *when and to the extent construction charges repayable under that contract are paid to the United States, the lands with respect to which full payment is made will no longer be subject to the excess-land limitations of the Federal reclamation laws*. Development of this phase of the proposed contract constitutes the application of a principle which is consistent with a policy of long standing and which is compatible with the construction of Acts of Congress as they have been interpreted by administrative officials and legal staffs of the Department over a long period of years." (Emphasis supplied)

This paragraph clearly and explicitly states to the Congress that the "pay-out" principle will be included in the Kings River contract, applying a policy of long standing.

The second volume (PART TWO) constitutes a record of the negotiations, up to the date of the "1956 Study", between the United States and the Kings River water users with respect to a contract for the use of storage space in the Kings River Flood Control Reservoir (the Pine Flat Dam and Reservoir) for the storage of privately-owned irrigation water. The volume consists of a 17-page summary of the negotiations, followed by 55 exhibits which are copies of correspondence, memoranda, and other documents relating to the negotiations. Throughout this record, there are many assurances by officials of the Department of the Interior to the effect that "pay-out" (i.e., payment in full of the allocated share of the construction costs) would eliminate application of the acreage limitation provisions of Reclamation Law.

A copy of the then pending draft (dated October 27, 1955) of the proposed contract between the United States and the Kings River interests appears as Exhibit 52 in this volume. It includes

the "pay-out" principle. The draft contains provisions specifically permitting prepayment in full "by any member unit, landowner, or stockholder" (pages 7 and 8), a provision on page 15 that the acreage limitations "shall not apply" to lands for which payment in full has been made, and an express statement on page 17 that such payment terminates the applicable "recordable contract" under which the landowner had agreed to dispose of his excess lands.

With respect to the reaction of Congress to the Interior Department's report that the "pay-out" principle would be included in the Kings River contract, the District Court made the following Finding of Fact (App. page 13):

> "20. This study and the views expressed therein endorsing the pay-out principle were widely disseminated by the Department of the Interior when presented to Congress in 1956. Congress did not reject this interpretation of reclamation law, but, to the contrary, it enacted general reclamation legislation, the Small Reclamation Projects Act of 1956 (70 Stat. 1044, 43 U.S.C. § 4223), based upon and expanding the principle by providing that payment of the capital component, or of interest thereon, attributable to excess lands on a project completely displaces the application of acreage limitation to such lands. Congress had also recognized in the Russian River project authorization of the Flood Control Act of 1950 (64 Stat. 170) that lump sum payment for irrigation benefits obviated the application of acreage limitation to excess lands in a project coming within the provisions of Section 8 of the Flood Control Act of 1944."

The significance of this proof of Congressional approval of the "pay-out" principle cannot possibly be overstated, yet the Court of Appeals ignored it. The Congressional Committees had become disturbed by the public outcry over the Department of the Interior's announced intention to enter into a contract with the Kings River water users which would embody the "pay-out" principle. The Congressional Committees demanded an explanation

from the Department of the Interior. The Department supplied a report confirming the fact that the "pay-out" principle would indeed be included in the proposed contract, and furnished a copy of the then pending draft of the agreement embodying the "pay-out" principle. The Department also supplied a vast amount of material showing that this "pay-out" principle was consistent with Reclamation Law, and that it had been consistently applied by the Department over a period of many years.

As promised in the Department's letter of January 16, 1956, action on the proposed contract was deferred, following submission of the report to the Congressional Committee, for a "reasonable time" so that the Committee could give it the "necessary study". But, as the District Court stated in Finding 20, Congress did not reject the Department's interpretation of Reclamation Law. Having questioned the Department's policy and received the Department's explanation and justification of it, the Congressional Committee allowed the policy to stand. In other words, the Committee accepted it.

Negotiations with the Kings River interests were later resumed on the announced basis, i.e., including the "pay-out" principle. They continued on that basis until "pay-out" was disapproved by the new Solicitor of the Department of the Interior on December 26, 1961 (Finding 16; App. pages 10-11).

Congress not only accepted the explanation and justification of the "pay-out" principle, but, as the District Court found, Congress went on to apply the "pay-out" principle and even expand upon it in subsequent legislation. (Finding 20; App. page 13).

As noted above, the Department's report to Congress (the "1956 Study") was introduced by the United States in evidence at the trial of this action as Exhibits 84 and 85. The significance of this evidence was confirmed by the Findings of Fact of the District Court (Findings 18, 19 and 20; App. pages 11-13) and it was fully presented to the Court of Appeals in the brief of Tulare Lake Canal Company, the Defendant-Appellee (see pages

36, *et seq.*). The brief also called attention emphatically to the Congressional actions applying and implementing the "pay-out" principle. (Brief pages 46, *et seq.*)

Despite the obvious significance of this evidence of Congressional approval of the "pay-out" principle, the decision of the Court of Appeals does not even mention it, let alone discuss it. Nor does the Court mention the Findings of Fact as to this evidence (Nos. 18, 19 and 20; App. pages 11-13). The Court's decision contains a number of references to certain of the exhibits in the "1956 Study" (see, for example, Footnotes 173, 181, 188-193). However, the Court never mentions the fact that the two-volume document was the answer by the Interior Department to a Congressional demand for an explanation of its decision to apply the "pay-out" principle in the Kings River contract. Nor does the Court take notice of the final paragraph of the Department's Summary (quoted above at page 28), concluding that the "pay-out" principle is valid. The Court's failure to take notice of this statement of the Department's approval of the "pay-out" principle is all the more remarkable in view of the fact that the paragraph was quoted in full in Finding 18 (App. pages 11-12) and in Defendant-Appellee's Brief in the Court of Appeals (page 36).

Most remarkable of all, however, is the circumstance that the Court of Appeals apparently did not perceive the significance of the facts that (1) Congressional Committees had questioned the Department of the Interior about the application of the "pay-out" principle to the Kings River contract; (2) the Department had replied that the "pay-out" provisions would be included in the proposed contract, and demonstrated that such a provision was lawful and proper under existing law; and (3) the Congress not only accepted the Department's conclusion and explanation, but actually applied and expanded the "pay-out" principle in subsequent legislation. (Finding 20; App. page 13).

It is respectfully submitted that in ignoring this evidence and

the Findings of the District Court based thereon, the Court of Appeals has "so far departed from the accepted and usual course of judicial proceedings" as to call for a review by the Supreme Court.

C. THE COURT OF APPEALS IGNORED AND LEFT UNDISTURBED FINDINGS OF FACT WHICH ENTITLED THE DEFENDANT TO AN AFFIRMANCE OF THE JUDGMENT AS A MATTER OF LAW

The District Court found as a fact that the Defendant was entitled to judgment because it had relied to its detriment upon repeated Government assurances that the "pay-out" principle would be available as a method of avoiding application of the Acreage Limitation Provisions.

Findings of Fact Nos. 24, 25 and 26 (App. pages 16-17) establish that:

> "* * * * the Kings River water users relied upon numerous and repeated assurances made to them by the Bureau of Reclamation and the Department of the Interior that * * * * acreage limitation would no longer apply to any Kings River contracting entity after it made final payment of capital charges, such as was done by the defendant in this case. * * * * The Kings River water users, including the defendant herein, have expended millions of dollars and untold numbers of hours in reliance upon the Bureau's representations that pay-out would terminate acreage limitations * * * *." [Finding 24].
>
> "Therefore, the water users were in the position of having paid almost half of the capital cost obligation for the acquisition of permanent storage rights in Pine Flat Dam in reliance upon assurances that the use of those rights would not be subject to acreage limitations after the balance of their respective shares of the capital cost obligations had been fully repaid. * * * *" [Finding 25].
>
> "To permit the Government to reverse its position as to the effect of pay-out would mean that the Kings River water users paid out millions of dollars in reliance to their detriment upon a legal interpretation repeatedly reaffirmed to them by the Government * * *." [Finding 26].

There is ample evidence in the Record to support these Findings that there were "repeated assurances" by Interior Department officials to the Kings River interests that a "lump-sum" payment of the allocated portion of the construction cost would terminate the acreage limitation provisions. See, for example, the letter of October 21, 1952 from the San Joaquin Valley District Manager of the Bureau of Reclamation to the Kings River Conservation District stating:

> "* * * we also have assured you that the proposed lump-sum payment contract, which you requested and we furnished, would remove the excess land restrictions of Reclamation Law * * *." (PART TWO of the "1956 Study", Exhibit 27)

See also Assistant Secretary of Interior Aandahl's letter of May 19, 1954 to Mr. William F. Docker, counsel for the Kings River interests, stating that the contract will provide the water users with an option "to make a lump sum payment in advance" and that "the excess land laws become inoperative upon payment in full." (Exhibit 34 in PART TWO of the "1956 Study"). See also Secretary McKay's letter of October 20, 1955, to Mr. Eugene E. Marsh, attorney for a Kings River landowner, stating:

> "* * * lump sum payments * * * will permit existing large landowners to comply with the provisions of the Reclamation Law without disposing of their excess land holdings." (Exhibit 41 of PART TWO of the "1956 Study".)

Another example of such assurances is the August, 1957 letter from the Solicitor of the Department of the Interior, Elmer Bennett, Esq. to the Kings River people stating:

> "* * * payment either in cash or over a period of time * * * will terminate the excess land provisions of the Federal reclamation law * * *." (Ex. H4; R. T. 322).

These above-quoted Findings of Fact as to assurances by the Department of the Interior and reliance thereon by the Kings River interests, which are not even mentioned, much less overturned, by the Court of Appeals, entitled the defendant Tulare Lake Canal Company to an affirmance of the District Court's judgment as a matter of law. There is nothing whatever in the decision to suggest that these Findings are not supported by the evidence, or, on any theory, are clearly erroneous. These Findings of Fact stand today as a valid, unquestioned, and undisturbed determination that the defendant, Tulare Lake Canal Company, was entitled to judgment in its favor because of its reliance, to its substantial detriment, upon the repeated representations and assurances by officials of the Department of the Interior that when it paid its share of the allocated cost of construction, it would be free of the acreage limitation provisions of Reclamation Law.*

How this defense could have escaped the attention of the Court of Appeals is difficult to understand. It was clearly presented in the Defendant-Appellee's brief before the Court of Appeals (particularly at pages 59 and 60). Yet there is not a single word in the Court's lengthy opinion regarding this defense of "reliance".

The omission to deal with this defense was called to the attention of the Court of Appeals in the Petition of Tulare Lake Canal Company for a Rehearing (page 10) and also in the Petition for Rehearing filed on behalf of the Intervenor-Defendants, Tulare Lake Basin Water Storage Basin District and Salyer Land Company (pages 5 and 6). The Court's "Order on Petition for Rehearing" (Pet. App. Ex. B; 535 F.2d 1143) still ignored this defense.

It is particularly strange that the Court of Appeals for the Ninth Circuit should have ignored this defense of reliance as that Court has repeatedly held in recent years that when a citizen has

*Similar assurances were made to and relied upon by most, if not all, of these *amici curiae*.

relied upon assurances of Government officials as to interpretations of the law, those assurances cannot later be repudiated if to do so would substantially injure the citizen who had relied upon them. In the case of *Brandt v. Hickel* (1970), 427 F.2d 53, for example, the Court of Appeals for the Ninth Circuit put the matter very succinctly:

> "To say to these appellants, 'The joke is on you. You shouldn't have trusted us,' is hardly worthy of our great Government." (At page 57).

The failure of the Court of Appeals to deal with this defense of reliance must mean that the Court had no answer to it.

Here again, in reversing a judgment without even considering an alternative ground for affirmance established by the District Court Findings of Fact, the Court of Appeals for the Ninth Circuit "has so far departed from the accepted and usual course of judicial proceedings" as to call for the Supreme's Court supervision.

CONCLUSION

Amici Curiae believe that a writ of certiorari should issue herein, *First*, because the Court of Appeals has decided extremely important questions of Federal Law which have not been, but should be, settled by the Supreme Court, *Second*, because the decision

of the Court of Appeals interpreting Federal Law is in conflict with applicable decisions of the Supreme Court, and *Third*, because in three respects the Court of Appeals has departed so far from the accepted and usual course of judicial proceedings as to call for the exercise of the Supreme Court's power of supervision.

Dated: December 3, 1976.

Respectfully submitted,

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(Appendix follows)

Appendix

Findings of Fact, Conclusions of Law and Judgment Entered by the District Court in This Case.

The Court having issued its Memorandum and Order in this proceeding on January 6, 1972, holding that the Government's request for an injunction is denied, because reclamation laws do not apply to water stored behind the Pine Flat Dam, and if they did, pay-out relieved defendant of the 160-acre limitation, now makes its findings of fact and conclusions of law, as follows:

Findings of Fact

1. This suit was brought by the United States for an injunction against defendant, Tulare Lake Canal Company, to restrain it from delivering water stored in Pine Flat Dam and Reservoir (herein referred to as Pine Flat Dam) to lands held by a single owner in excess of 160 acres. Defendant is a California water company which delivers to its stockholders, through canals and works owned by it, Kings River water appropriated under vested, nonappurtenant water rights for use in irrigation. The lands owned by defendant's stockholders and served by defendant are located within the Tulare Lake Basin, hereafter described. Defendant admits that it has delivered, and unless the law forbids will continue to deliver, water stored in Pine Flat Dam to its stockholders for the irrigation of lands in excess of 160 acres in single ownership. Defendant is one of 28 entities which have contracted with the United States for the exclusive and perpetual storage use of Pine Flat Dam for irrigation purposes, such contracts in the aggregate exhausting the entire capacity of Pine Flat Dam for the storage of water for irrigation purposes.

2. Intervenor defendants in the proceeding are Tulare Lake Basin Water Storage District and Salyer Land Company. The former is one of the 28 contracting entities referred to and the latter owns and operates for agricultural purposes lands in excess

of 160 acres within the Tulare Lake Basin. A brief *amici curiae* was presented jointly in behalf of Alta Irrigation District, Fresno Irrigation District, Consolidated Irrigation District, Kings River Water District, Laguna Irrigation District (all Kings River contracting entities) and Kaweah Delta Water Conservation District, Lower Tule River Irrigation District and Tule River Association (entities interested through their participation in similar projects on the Kaweah and Tule Rivers).

3. Pine Flat Dam was constructed on the Kings River in California, about 25 miles easterly of the City of Fresno, and was completed in 1954. Pine Flat Dam was constructed and is, and always has been, operated by the Army Engineers pursuant to Section 10 of the Flood Control Act of 1944 (58 Stat. 891, 901). Pine Flat Dam, as determined by Congress, is primarily for flood control purposes but with important incidental irrigation uses. In 1963 the 28 Kings River entities entered into the contracts with the United States, previously referred to, by which they obtained for the first time a contractual right for the permanent use for irrigation storage purposes of Pine Flat Dam. In return, the 28 contracting entities paid, or agreed to pay, the cost of Pine Flat Dam allocated to irrigation uses, as determined by law, in the total amount of $14,250,000. Under these contracts, the 28 entities also agree to pay, and have paid, $750,000 to the United States for a conveyance, and the United States has conveyed to said entities as tenants in common, "for irrigation purposes and other beneficial agricultural uses free and clear of all encumbrances of every name and nature, any and all right, title, or interest [the United States] now has or claims to have in and to the water of Kings River," as set forth in Conveyance and Covenants in Compromise and Settlement of Fresno Slough Claims, No. 14-06-200-699-A.

4. Defendant, as one of the 28 contracting entities, entered into Contract No. 14-06-200-691-A with the United States on

December 23, 1963. Simultaneously with the execution of said contract, defendant paid to the United States the entire balance owed by it for such irrigation storage rights and for the conveyance of the United States' claims to Kings River water for irrigation uses, referred to in the preceding paragraph.

5. By its contract, including specifically Article 8(e) thereof, defendant assumed no obligation with regard to the delivery of stored water to lands held in excess of 160 acres in single ownership unless and to the extent that such obligation was required by the then-existing laws of the United States. It is the Government's contention in this proceeding that said laws apply general reclamation law, and specifically Section 46 of the Omnibus Adjustment Act of 1926 (44 Stat. 649, 43 U.S.C. § 423e), to the irrigation use of Pine Flat Dam and do forbid the delivery of stored water to such so-called excess lands. It is defendant's contention, in which the intervenors and *amici curiae* join, that the laws of the United States contain no requirement that general reclamation law is applicable to the irrigation storage use of Pine Flat Dam. Further, it is defendant's contention, in which intervenors and *amici curiae* join, that even if the so-called acreage limitation of reclamation law did initially apply to the irrigation storage use of Pine Flat Dam, that limitation was extinguished as to defendant when, on December 23, 1963, it completed payment to the United States of its entire share of the capital cost of Pine Flat Dam. The United States, in turn, denies that such pay-out has this effect.

6. The case was tried in Fresno during the period extending from Tuesday, May 4, 1971, to Friday, May 14, 1971, both inclusive. Twelve witnesses testified in person in behalf of defendant, and two witnesses testified by deposition in behalf of defendant and intervenor Tulare Lake Basin Water Storage District. Various stipulations of fact were entered into by the parties and approved by the Court. No witnesses appeared for the United States. Over 700 documentary exhibits were received in evidence. Following

extensive briefing by all parties and *amici curiae,* oral argument was held before the Court on September 2, 1971.

7. Prior to 1944, both the Army Engineers and the Bureau of Reclamation had made studies of the proposed Pine Flat Dam project and submitted them to the Congress. The Congress decided in favor of having the project built and operated by the Army Engineers, and Section 10 of the 1944 Act expressly referred to and adopted the report of the "Secretary of War and the Chief of Engineers," said report being referred to as House Document Numbered 630, Seventy-Eighth Congress, Third Session. The adoption of the report was subject to only one limitation, not pertinent here. No proposal for or mention of the application of reclamation law or acreage limitation to Pine Flat Dam was contained in this report adopted by Congress. Section 10 of the 1944 Act further expressly provided that payment for irrigation uses should be arranged for by the Secretary of War, payment to the United States to be made "either in lump sum or annual installments". The aforementioned repayment obligation of $14,250,000 was determined by the Secretary of War in accordance with the procedures of applicable law. Payment of this amount by the water users under their contracts will fully reimburse to the United States the capital costs of the project allocated in accordance with law to irrigation storage use.

8. The report of the Army Engineers informed the Congress that all of the waters of the Kings River available for irrigation purposes were fully appropriated by the water users; that they had developed approximately 850,000 acres in the Kings River service area with their own private funds; and that they had built and owned a complete system of canals and other works which were used for distribution of water diverted from Kings River for irrigation purposes. The Army Engineers expressed the view that the project was primarily for flood control, with incidental, although important, irrigation benefits, consisting of capacity for the storage

of water to be used for irrigation. The Bureau of Reclamation's report to Congress recognized that no new lands would be developed by the construction and operation of the project, and the House Flood Control Committee Report found that irrigation benefits from the project "would accrue to land now already developed without bringing into production additional arid land".

9. In the Congressional hearings many Kings River water users testified, supporting the report of the Army Engineers in preference to that of the Bureau of Reclamation. Among the many facts developed, the testimony showed that about 200,000 acres at the southern limit of the Kings River service area, known as the Tulare Lake Basin, were subject to periods of extensive flood and to other periods of intensive drought; that well water was not available in important areas of the Basin for either irrigation or domestic uses; that the Basin contained practically no dwellings for residential purposes; that water conditions in the Basin were suitable for large-scale farming operations, but not for permanent farm homes; and that subdivision and settlement of the area would be hazardous and unwise. At the time of the June, 1943, hearings, it was pointed out to the Congress that 112,000 acres of the Tulare Lake Basin were then flooded, to an average depth of 14.5 feet. Testimony by the Commissioner of Reclamation recognized "there is no water to be developed . . . our studies indicate that the complete normal run-off . . . [is] now under State law allocated to individuals and agencies in the region, and we cannot interfere with that".

10. The evidence at the trial supports the various factual statements set forth in the report of the Army Engineers, the report of the Bureau of Reclamation and in the testimony before the congressional committees, as and to the extent outlined in Paragraphs 8 and 9, above, and the Court hereby finds accordingly. These factors influenced the Congress in enacting the Flood Control Act of 1944 and thereby authorizing Pine Flat Dam as a flood control

rather than a reclamation project. Further, the evidence at the trial compels the finding that the situation, above described, continues to exist at the present time. That is, the project is primarily a flood control project; the United States has conveyed to the water users any and all right, title or interest it had or claimed to have in and to the water of Kings River, as set forth above in Finding No. 3, and Pine Flat Dam has not developed any new or supplemental water supply which can be sold by the United States; all rights to the use of Kings River water for irrigation purposes and other beneficial agricultural uses are vested in the local water users; arid lands have not been reclaimed within the Kings River service area as the result of the construction and operation of Pine Flat Dam; the lands have been developed and the complete distribution system of canals and ditches are owned by the local water users; no canals, ditches or other distribution works have ever been built by the United States or with any federal assistance; and because of flooding, drought, soil conditions and inadequate domestic and irrigation water supplies, the 200,000 acres known as the Tulare Lake Basin are not adaptable to actual settlement by family farmers in 160-acre or 320-acre parcels as contemplated by the federal reclamation laws. The evidence shows that even at the time of trial in May, 1971, some 27,000 acres of Tulare Lake Basin were yet under flood waters remaining from the massive inundation of 89,000 acres during the 1968-1969 run-off season and that, in addition to substantial crop loss and flood fighting expense, further substantial costs were yet to be incurred in bringing such land back into production. Earlier, in the 1966-67 run-off season, another substantial flood struck Tulare Lake Basin. Two other instances of flooding in Tulare Lake Basin have occurred since Pine Flat Dam was completed in 1954. The Government's contention that reclamation law is applicable because of the irrigation benefits provided by Pine Flat Dam to the water users in the service area is without merit.

11. Officials of the Bureau of Reclamation in California concluded in studies and recommendations, completed in 1947, that it was not feasible to attempt to apply the acreage limitation provisions of reclamation law to the Tulare Lake Basin. The United States did not contend in this proceeding, and never has contended, that reclamation law and acreage limitation were intended by Congress to apply to some parts of the Kings River service area and not to other parts. It contends, as does defendant, that Congress intended the same law to apply to the entire area.

12. Contrary to the Government's contention that the language of Section 8 of the Flood Control Act of 1944 (58 Stat. 891), supported by its legislative history, requires the application of reclamation law to Pine Flat Dam, the Court finds that Congress intended that Section 8 of the Flood Control Act of 1944 (58 Stat. 891) make reclamation law and the acreage limitation prescribed by reclamation law applicable to Flood Control projects only where a new or supplemental water supply would be developed by the project which would be owned and could be sold by the United States for irrigation purposes through canals and ditches constructed by the Bureau of Reclamation; and Congress did not intend to make reclamation law or the acreage limitation prescribed by reclamation law applicable to projects authorized and constructed under said Flood Control Act of 1944, consisting of dam and reservoir projects constructed by and operated under the direction of the Secretary of War, unless and until: (a) the Secretary of War has determined upon recommendation by the Secretary of the Interior that such a project might be utilized for irrigation purposes; (b) the Secretary of the Interior has made a report and finding that additional works in connection with such project are necessary for irrigation purposes; and (c) there has been specific authorization of such additional works by an authorization act of Congress. The Court finds further that no new or supplemental water supply has been or is to be developed by Pine Flat Dam

which can be sold by the United States; that no water stored in Pine Flat Dam has been or is to be delivered for irrigation purposes through canals and ditches constructed by the Bureau of Reclamation; that the Secretary of the Interior has made no recommendation, as contemplated by Section 8 of the 1944 Act, regarding the utilization of Pine Flat Dam for irrigation purposes and no determination based upon any such recommendation has been made by the Secretary of War; that the Secretary of the Interior has not made any report and finding that additional works in connection with Pine Flat Dam are necessary for irrigation purposes; that there has been no authorization of any such additional works by any authorization act of Congress; and that said Section 8 of the Flood Control Act of 1944 does not make reclamation law applicable to the Pine Flat Dam project. The Court further finds that the irrigation use of said project was prescribed by Congress in Section 10 of said Flood Control Act of 1944.

13. Although Section 10 of the 1944 Act directed the payment for conservation storage in Pine Flat Dam be arranged by the Secretary of War, the payment contracts between the United States and the Kings River water users were negotiated by the Bureau of Reclamation pursuant to a directive from the President of the United States. This directive, however, could not, and did not, change the law applicable to the project as provided by Congress. In 1967, in connection with certain legislation pertinent to the Kings River, the Senate Committee on Interior and Insular Affairs observed in Senate Report No. 837, Ninetieth Congress, First Session:

> "The Secretary of the Interior was not 'delivering water' and, in fact, did not even have a project. The Kings River people owned the water and the Corps of Engineers constructed and operated dam and reservoir. The Department of the Interior was merely the contracting agency for the United States . . ."

The evidence at the trial supports the foregoing statements of the Senate Interior and Insular Affairs Committee, and the Court so finds.

14. The following findings are concerned in particular with the second issue in the case: Whether, even assuming that reclamation law and the 160 acre limitation initially applied to the irrigation use of Pine Flat Dam and the lands served by defendant with "stored water," payment in full of defendant's capital obligation with respect to Pine Flat Dam, which occurred on December 23, 1963, extinguished the application of the acreage limitation with respect to the land served by defendant. In regard to this issue, it was defendant's contention that final payment in full of the repayment obligation of a contracting entity for the irrigation benefits of a project whether in lump sum at the beginning of a contract period or whenever it might occur, relieved that entity from the excess land provisions of federal reclamation law. Plaintiff, however, contended that advance payment in full of the repayment obligation of a contracting entity for the irrigation benefits of a given project does not relieve that entity from the excess land provisions of federal reclamation law. The findings which follow this statement and support defendant's contention on this issue should be read in connection with the preceding findings.

15. Plaintiff contended that Section 3 of the Act of August 9, 1912 (37 Stat. 266, 43 U.S.C. Section 544) did not modify what it conceives to be the basic objective of the excess land provisions of federal reclamation law. Said Section 3 provides in part as follows:

> That no person shall . . . acquire, own, or hold irrigable land for which entry or water rights application shall have been made under the said reclamation act of June seventeenth nineteen hundred and two and acts supplementary thereto and amendatory thereof, before final payment in full of all installments of building and betterment charges shall have been made on account of such land in excess of one farm

> unit as fixed by the Secretary of the Interior, as the limit of area per entry of public land or per single ownership of private land for which a water right may be purchased respectively, nor in any case in excess of one hundred and sixty acres, nor shall water be furnished under said acts nor a water right sold or recognized for such excess; but any such excess land acquired at any time in good faith by descent, by will, or by foreclosure of any lien may be held for two years and no longer after its acquisition;

The Court finds and so rules that said Section 3 expressly limits the acreage limitation provisions in Section 5 of the Reclamation Act of June 17, 1902 (32 Stat. 387) to the period before "final payment in full" of the pertinent contractual repayment obligations relating to an irrigation project. This provision was interpreted by Chief Counsel King, of the Bureau of Reclamation in his opinion of July 1, 1914 (43 L.D. 339), to "permit the furnishing of water for land on which payment in full has been made of building and betterment charges even when more than 160 acres of such land is owned by one person." This provision and interpretation were consistent with the 1902 Act, and were carried forward in subsequent acts such as Section 13 of the Reclamation Extension Act of August 13, 1914 (38 Stat. 690, 43 U.S.C. Section 443).

The King opinion was promptly accepted and promulgated by the Department of the Interior. It was subsequently incorporated into Interior regulations in 1920 (27 L.D. 418), where it remains to this date (43 C.F.R. Section 230.65).

16. The practice of extinguishing acreage limitation upon final payment by a contracting entity, whether in lump sum at the beginning of a contract period, or whenever it might occur (often referred to as the "pay-out principle"), was according to the extensive evidence presented to this Court, the uniform practice of the Bureau of Reclamation and the Department of the Interior for 50 years. On December 26, 1961, for the first time, that practice was

held unlawful by an opinion of the then Solicitor of the Department of the Interior (68 I.D. 374). Thereafter, by contracts with the Kings River water users, the United States agreed to submit for binding judicial determination the issue of whether the laws of the United States require the application of acreage limitations in the circumstances presented by this case.

17. In the course of the hearings on the Kings River Project leading to enactment of the Flood Control Act of 1944, the Commissioner of Reclamation acknowledged to Congress that the jurisdiction of the Bureau of Reclamation over the distribution of irrigation water would terminate upon the completion of pay-out. During the period 1945 through early 1961, four Solicitors of the Department of the Interior held that full repayment by a contracting entity terminates the application of acreage limitation to that entity [Fowler Harper's Memorandum opinion of August 21, 1945; Associate Solicitor Cohen's opinion (M-35004), October 22, 1947; Solicitor Elmer Bennett's opinion (M-36457), July 10, 1957 and Memorandum of October 17, 1957; Solicitor Theodore Stevens' opinion (M-36611), January 3, 1961]. Two of the Solicitors' opinions (Bennett and Stevens) related specifically to the Pine Flat Dam project. In addition, statements by three successive Secretaries of the Interior also confirmed the pay-out principle to Congress and the Kings River water users [e.g., Secretary Chapman, November 2, 1950; Secretary McKay, March 2, 1954; Secretary Seaton, July 12, 1957, October 27, 1957]. The earliest of these, by Secretary Chapman in 1950, represented to Congress that the pay-out principle was incorporated into the 1944 Flood Control Act's authorization of the Pine Flat project by the provision in Section 10 for repayment for conservation storage benefits in "lump sum or annual installments".

18. In 1956 the Department of the Interior prepared and submitted to the Chairman of the Public Works and Resources Subcommittee of the Committee on Government Operations, House of

Representatives of the Congress of the United States, a two-volume study entitled "Excess Land Provisions of the Federal Reclamation Laws and the Payment of Charges." This study related expressly to the Pine Flat Dam and the Kings River water users. It was addressed to the legality under reclamation law of a draft contract with the Kings River water users which provided for release of acreage limitations upon final pay-out of the capital charges allocated to the water users. The study, transmitted to the congressional subcommittee by the Under Secretary of the Interior, traced the practice of the Bureau and Department with respect to the pay-out doctrine from 1902 to 1956. The study included numerous exhibits verifying the practice stated and the conclusions reached. The final paragraph of the Department's summary statement, extending from pages 1 to 56, both inclusive, of volume one of the study, concludes as follows at page 56:

> The proposal contained in the repayment contract arrangement negotiated with the Kings River Conservation District is simply that when and to the extent construction charges repayable under that contract are paid to the United States, the lands with respect to which full payment is made will no longer be subject to the excess land limitation of the federal reclamation laws. Development of this phase of the proposed contract constitutes the application of a principle which is consistent with a policy of long standing and which is compatible with the construction of Acts of Congress as they have been interpreted by administrative officials and legal staffs of the Department over a long period of years.

'Volume two of the 1956 Study presented to Congress contains numerous letters and correspondence from the Department of the Interior pertaining to the determination and assurances that pay-out by Kings River contracting water users terminates application of acreage limitations. Furthermore, the evidence of record contains numerous other documents of the same nature issued by the Department up to and including the year 1961.

19. The draft contract with the Kings River water users incorporated in the study provided for the extinguishment of acreage limitation upon complete pay-out by the contracting entity or by a landowner. In the latter situation, final payment by the landowner consisted of the capital charges applicable to his land. The contract between the United States and the defendant of December 23, 1963, involves final payment by the contracting entity, itself, which payment, as previously stated, was made, in full, on December 23, 1963. The above-quoted statement of the Department of the Interior in paragraph 18 covers conclusively the principle of pay-out and release of acreage limitation involved in the defendant's contract of December 23, 1963.

20. This study and the views expressed therein endorsing the pay-out principle were widely disseminated by the Department of the Interior when presented to Congress in 1956. Congress did not reject this interpretation of reclamation law, but, to the contrary, it enacted general reclamation legislation, the Small Reclamation Projects Act of 1956 (70 Stat. 1044, 43 U.S.C. § 4223), based upon and expanding the principle by providing that payment of the capital component, or of interest thereon, attributable to excess lands on a project completely displaces the application of acreage limitation to such lands. Congress had also recognized in the Russian River project authorization of the Flood Control Act of 1950 (64 Stat. 170) that lump sum payment for irrigation benefits obviated the application of acreage limitation to excess lands in a project coming within the provisions of Section 8 of the Flood Control Act of 1944.

21. The record contains an enormous amount of evidence, in addition to the 1956 Study, verifying the Department of the Interior's consistent practice on reclamation projects or recognizing that acreage limitation terminates upon final payment of capital charges. A Bureau of Reclamation survey report on landownerships on federal reclamation projects and laws applicable thereto pub-

lished in 1946 verifies that the pay-out principle was consistently recognized in the administration of reclamation projects constructed prior to the enactment of the Flood Control Act of 1944. The parties have stipulated as to the existence and as to the pertinent pay-out provisions contained in some 100 contracts on numerous reclamation projects, verifying this practice. Many of these contracts were specifically approved by Congress pursuant to Section 7(c) of the Reclamation Project Act of 1939 (53 Stat. 192, 43 U.S.C. § 485f). The plaintiff, however, contended that no instances were shown of actual advance lump sum pay-out, but the court finds that this attempted distinction is of no significance and that under the rationale for the practice, it is immaterial whether full payment is made at the outset or at a later time.

22. Moreover, the Court notes that the Government, in response to one of defendant's interrogatories, stated that it knew of no instance where final payment of construction charges allocated to irrigation benefits had been made and acreage limitation had continued to be thereafter enforced. Similarly, the Court was advised of no instance wherein final payment, in lump sum or on an accelerated basis, had been refused by the United States. As to the latter, in any case, the Court has noted that Section 10 of the 1944 Act, applicable to Pine Flat Dam, expressly authorizes "lump sum" payment, and full payment has been made to the United States by the defendant, Tulare Lake Canal Company.

23. The 1959 report of the Committee on Interior and Insular Affairs of the House of Representatives, the committee of the House having cognizance over reclamation matters, on the bill which authorized the so-called San Luis project in California, House Report No. 399, Eighty-Sixth Congress, First Session, referred to the pay-out rule as documented in the aforementioned 1956 Study presented to Congress pertaining to Kings River and Pine Flat Dam and as applied theretofore, in the following terms:

"During the period when irrigation water contracts were entered with individuals rather than organized districts, it is thus clear that the law forbade delivery of water to no more than one farm unit held by an individual only so long as the entire construction cost allocated to the excess unit had not been paid in full. That the law was so read and applied by the Interior Department as shown in detail in the Bureau of Reclamation's printed publication entitled "Landownership Survey on Federal Reclamation Projects" (1946) and the Interior Department's two-volume document prepared for the Subcommittee on Public Works and Resources of the House Committee on Government Operations entitled "Excess Land Provisions of the Federal Reclamation Laws and the Payment of Charges" (1956).

"The same rule has been held to be applicable to irrigation district contracts . . .

"The present Secretary of the Interior has, in effect, announced his concurrence in this view of the law. On July 12, 1957, he said . . .

> 'The Department continues to recognize and support the basic concept of reclamation law that full and final payment of the obligation of a district to the Federal Government ends the applicability of the acreage limitations—

and added—

> 'So long as the present acreage limitations remain in the basic reclamation law, they should be complied with, until the district has fully discharged its obligations to the Federal Government.'

". . . Whatever may be the merits or demerits of continuing to apply the prevailing construction of the 1912 and 1926 acts to irrigation districts in situations in which, although final payment is made only after a period of years during which they received the benefits of interest-free Federal money and, in many cases, assistance from power revenues, it remains true that (1) the administrative practice of doing so is now so well fortified by history that it can

probably be successfully attacked by no one except Congress and (2) that there is no legislation now pending before Congress, nor has any ever been introduced, which would overrule the departmental interpretation of these acts or provide other standards to guide it."

The Court adopts the foregoing committee statement as a finding fully supported by the evidence in this proceeding.

24. As the evidence establishes, the Kings River water users relied upon numerous and repeated assurances made to them by the Bureau of Reclamation and the Department of the Interior that, even though acreage limitation initially applied to the irrigation use of water stored in Pine Flat Dam, such acreage limitation would no longer apply to any Kings River contracting entity after it made final payment of capital charges, such as was done by the defendant in this case. If pay-out has not the effect of extinguishing acreage limitation, the position of the Kings River water users and this defendant would be most seriously prejudiced. The Kings River water users, including the defendant herein, have expended millions of dollars and untold numbers of hours in reliance upon the Bureau's representations that pay-out would terminate acreage limitations under applicable law.

25. For example, beginning in early 1954 and continuing through 1963, the Kings River water users availed themselves of the storage facilities of Pine Flat Dam for irrigation purposes under annual interim contracts. Under such contracts, the water users, including defendant herein, paid amounts for water storage for exceeding the operation and maintenance costs allocated to irrigation use. The water users, including defendant herein, were allowed credits toward the $14,250,000 capital cost repayment obligation for the amounts paid under these interim contracts in excess of annual operation and maintenance costs allocated to irrigation use, but these credits were contingent upon their ultimate execution of permanent contracts. The credits amassed through

1963 amounted to $6.8 million, or almost one-half of the total repayment obligation for irrigation storage use of Pine Flat Dam. Therefore, the water users were in the position of having paid almost half of the capital cost obligation for the acquisition of permanent storage rights in Pine Flat Dam in reliance upon assurances that the use of those rights would not be subject to acreage limitations after the balance of their respective shares of the capital cost obligations had been fully repaid. Had the water users foregone the irrigation storage use of the Dam after the Department of the Interior disavowed the applicability of the pay-out principle, they would have forfeited these substantial payments already made toward permanent storage rights.

26. To permit the Government to reverse its position as to the effect of pay-out would mean that the Kings River water users paid out millions of dollars in reliance to their detriment upon a legal interpretation repeatedly reaffirmed to them by the Government and commended to them by long-standing interpretation and application of the law over the course of at least 50 years. The Court is not aware of a clearer case of substantial reliance by citizens upon the Government's contemporaneous and long-standing administrative interpretation and application of federal law, which is fully supported by the statutes enacted by Congress.

27. All of the findings of fact set forth in the Court's Memorandum and Order of January 6, 1972, are incorporated herein to the extent not above included.

Conclusions of Law

1. Section 10 of the Flood Control Act of 1944 authorizes Pine Flat Dam to be constructed and operated by the Army Engineers under supervision of the Secretary of War [now Army] for flood control and other purposes, including irrigation storage use, and does not direct or authorize the application of federal

reclamation law or the 160-acre limitation to the irrigation storage use of that facility.

2. It is infeasible and would produce bizarre and absurd consequences if an attempt were made to impose acreage limitation and family-farm settlements within the Tulare Lake Basin.

3. The Laws of the United States, and particularly Section 8 of the Flood Control Act of 1944, do not make federal reclamation law applicable to a dam and reservoir project authorized by said Flood Control Act and operated under the direction of the Secretary of War unless and until: (a) the Secretary of War has determined upon recommendation by the Secretary of the Interior that such a project might be utilized for irrigation purposes; (b) the Secretary of the Interior has made a report and finding that additional works in connection with said project are necessary for irrigation purposes; and (c) there has been specific authorization of such additional works by an authorization act of Congress. None of the foregoing conditions having been satisfied, Federal reclamation laws, including the acreage limitation provisions thereof, have no application to the irrigation storage use of Pine Flat Dam.

4. Federal reclamation laws provide an example of the type of legislation, comprising numerous separate enactments over a period of many years, which must be read as a composite whole. A later enactment does not supersede an earlier enactment unless Congress has expressed its intent to this effect or unless there is a necessary conflict between the later and earlier enactments. Section 3 of the Act of August 9, 1912, and other provisions of statute law recognizing that acreage limitation terminates upon final pay-out of capital costs by a contracting entity are not in conflict with Section 46 of the Omnibus Adjustment Act of May 25, 1926, or any other reclamation law. Federal reclamation laws, even if applicable, do not apply acreage limitation after an entity contracting with the United States completes full and final pay-

ment of its contractual obligation for reimbursable capital costs allocable to irrigation benefits.

5. Administrative interpretation and application by the agency charged by Congress with the administration of a pertinent law, particularly, as here, where such administrative interpretation is contemporaneous with the enactment of the statute involved and the application of that interpretation is thereafter uniform and long-continued, are entitled to great weight by the federal judiciary. An administrative agency may not reverse itself and change such interpretation and application unless the statute plainly does not admit of the interpretation and application previously given it. These principles of law apply with peculiar force in a situation, such as the present one, where citizens have relied at vast expenditure of money and time upon repeated Government assurances of the correctness of its interpretation and administration of the acts of Congress involved, and where Congress, both by acceptance and affirmative action, has repeatedly approved such interpretation and administration.

6. The laws of the United States, as of December 23, 1963, the date of Contract No. 14-06-200-691-A between defendant and the United States for irrigation storage rights in Pine Flat Dam, did not prohibit, and have not prohibited at any time thereafter, the delivery of stored water from Pine Flat Dam to the excess lands of a large landowner who has not executed a recordable contract under federal reclamation law.

7. Pursuant to Article 8(e) of Contract No. 14-06-200-691-A, all the provisions of Article 8 of said contract, purporting to impose a prohibition against defendant's delivery of stored water from Pine Flat Dam to excess lands of a large landowner who has not executed a recordable contract, are void *ab initio* and of no effect.

8. All of the conclusions of law set forth in the Court's Memorandum and Order of January 6, 1972, and in the fore-

going findings of fact, are incorporated herein to the extent not above included.

9. Plaintiff is not entitled to the injunction prayed for in its complaint. Defendant and intervenors are entitled to judgment in their favor.

Dated: Mar 15, 1972.

M. D. CROCKER
United States District Judge

JUDGMENT

This action having been tried before the Court, Honorable Myron D. Crocker, District Judge, presiding, a decision having been rendered by the Memorandum and Order entered herein on January 6, 1972, and findings of fact and conclusions of law having been entered by the Court;

IT IS ORDERED, ADJUDGED AND DECREED:

1. The laws of the United States and particularly Section 8 of the Flood Control Act of 1944 do not make federal reclamation law applicable to a dam and reservoir project authorized and constructed under said Flood Control Act and operated under the direction of the Secretary of War unless and until: (a) the Secretary of War has determined upon recommendation by the Secretary of the Interior that such a project might be utilized for irrigation purposes; (b) the Secretary of the Interior has made a report and finding that additional works in connection with said project are necessary for irrigation purposes; and (c) there has been specific authorization of such additional works by an authorization act of Congress.

2. Pine Flat Dam and Reservoir was constructed and is operated as a flood control project with incidental use for irrigation purposes under the authorization of Congress contained in Section 10 of the Flood Control Act of 1944. Because no subsequent determination was ever made by the Secretary of War upon recommendation of the Secretary of the Interior that the project could be utilized for irrigation, no finding and report by the Secretary of the Interior was ever made that the construction of additional works was necessary for irrigation purposes, no subsequent authorization act was ever passed by Congress for the construction of any such additional works for irrigation, no canals and ditches through which water is delivered for irrigation purposes have ever been built by the Bureau of Reclamation and no supplemental water has been developed which is owned and can be sold by

the United States, Section 8 of the Flood Control Act of 1944 does not make federal reclamation law, or the acreage limitation provisions thereof, applicable to the use of Pine Flat Dam and Reservoir for irrigation purposes.

3. Under the laws of the United States applicable to Pine Flat Dam and Reservoir and its use and operation for irrigation storage, neither defendant, nor intervenor defendant Tulare Lake Basin Water Storage District, is subject to any limitation or requirement of federal reclamation law that they refrain from delivering "stored water," as defined in their respective contracts with the United States, to lands in excess of 160 acres in single ownership unless and until the owner thereof executes a so-called recordable contract with the United States to sell such excess lands.

4. Defendant and intervenor defendant Tulare Lake Basin Water Storage District are not bound by the requirements of federal reclamation law in their delivery of water stored in Pine Flat Dam and Reservoir.

5. Federal reclamation law has no application to lands within the Kings River Service Area by reason of their receiving water from storage in Pine Flat Dam and Reservoir; and, therefore, no condition or limitation of said federal reclamation law can be imposed upon intervenor defendant Salyer Land Company as a requirement for its receiving water from storage in Pine Flat Dam and Reservoir.

6. Federal reclamation laws, even if applicable, do not apply acreage limitation after an entity contracting with the United States completes full and final payment of its contractual obligation for reimbursable capital costs applicable to irrigation benefits.

7. Even if federal reclamation law, and the acreage limitation provisions thereof, were applicable to the receipt of water from storage in Pine Flat Dam and Reservoir, defendant was relieved of any such restriction regarding the delivery of "stored water," as defined in its contract with the United States, to lands in excess of

160 acres in single ownership by its full payment of its repayment obligation under said contract on December 23, 1963.

8. As of December 23, 1963, and at all times thereafter, the laws of the United States did not and do not prohibit the delivery of stored water from Pine Flat Dam to excess lands of a large landowner unless said owner executes a recordable contract under federal reclamation law. The provisions of Article 8 of contract number 14-06-200-691-A, between defendant and the United States, are void *ab initio* and of no effect.

9. The prayer of the United States for a permanent injunction against defendant is denied, and judgment is entered in favor of defendant and intervenor defendants that the United States take nothing by reason of its claims herein.

Dated: Mar 15 1972.

M. D. CROCKER
Myron D. Crocker
United States District Judge

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